IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 15851 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE D.H.WAGHELA Sd/-

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ? **1 to 5 NO**

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RASULMIYA H SHAIKH - Petitioner(s)
Versus
THE STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
MR BB NAIK for Petitioner
MS MD MEHTA ASSTT GOVERNMENT PLEADER for Respondents

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CORAM : HONOURABLE MR.JUSTICE D.H.WAGHELA

Date : 06/08/2007

ORAL JUDGMENT :

1. Rule. Learned A.G.P. Ms. Mehta waives service for respondents.

2. Invoking Article 226 of the Constitution, the petitioner has called into question the notice and communication dated 13.2.2007 by which the Registrar has called upon the petitioner to pay additional stamp duty failing which the document submitted by the petitioner for registration was to be referred to the Collector under the provisions of section 32-A of the Bombay Stamp Act, 1958 (for short, "the Act"). It was submitted by learned counsel Mr.Naik that the document of which registration was sought was an instrument of conveyance of immovable property purchased by the petitioner in an auction-sale held by this Court pursuant to a winding up proceeding in Company Petition No.37 of 2005. It was, on that basis, submitted that the instrument was covered by entry 17 of Schedule I of the Act and the duty leviable on the conveyance could only be for the market value equal to the amount of purchase money. He further submitted that it was held by this court in several cases that proper market value of property purchased in auction held by the court would be one which would be mentioned in the sale deed executed pursuant to the order of court.

3. It was submitted by learned A.G.P. on behalf of the respondents that, after the

aforesaid notice dated 13.2.2007, the instrument in question was already referred on 12.3.2007 to Deputy Collector, Stamps under the provisions of section 32-A of the Act and he was at present seized of the matter. It was fairly stated that Collector concerned shall determine the true market value of the property and the proper duty payable thereon, after giving to the petitioner a reasonable opportunity of being heard and keeping in view the aforesaid Article, express provisions and judgments of this court which may be relied upon by the petitioner. It was also stated that such determination and decision shall be rendered as expeditiously as practicable and within a period of one month from the date of receipt of a copy of the writ of the order. It was, therefore, submitted for the petitioner that he will approach the Deputy Collector concerned without waiting for issuance and service of notice, make his representation in writing along with a copy of this order and judgments relied upon by him for the purpose of earliest possible decision of the Collector.

4. Accordingly, petition is disposed recording the above consensus as regards further proceedings and expeditious disposal of the reference already made to the Collector under

section 32-A of the Act. It is needless to observe that the Collector concerned will hear and determine proper duty payable on the instrument in question as expeditiously as practicable, after giving an opportunity of hearing to the petitioner and in accordance with law. Rule is discharged with no order as to cost.

Sd/-
(D.H.Waghela, J.)

(KMG Thilake)